

Town of Amherst
Zoning Board of Appeals

DECISION

Applicant/Owner: Western Development Corp., c/o James Rodrigue
29 Hawthorne Road
Amherst, MA 01002

Date Application filed with the Town Clerk: June 23, 2008

Nature of request: Request to renew Special Permit (ZBA 2006-00014) for a flag lot and the filling of land under Sections 6.3 and 5.10 of the Zoning Bylaw.

Location of property: 68 Pomeroy Lane (Map 20C, Parcel 19, R-N & RLD/FC Zoning Districts)

Legal notice: Published in the Daily Hampshire Gazette on July 6 & July 16, 2008.

Abutters notice: July 8, 2008

Board members: Jane Ashby, Hilda Greenbaum, Eric Beal

Submissions: The petitioner has submitted an Application to the Zoning Board of Appeals.

Site Visit: July 23, 2008

The Board met on site and observed the following:

- The existing condition of on-going activities, including grading and placement of fill;
- The location of the installed culvert under the proposed driveway;
- The existing vegetated swale situated within the Town right-of-way adjacent to Pomeroy Lane.

The site visit had concluded prior to the arrival of James Rodrigue (petitioner).

Public Hearing: July 24, 2008

The petitioner, James Rodrigue, provided an introduction of the special permit renewal request to the Board and noted the following:

- The site improvements related to the flag lot and frontage lot had commenced;
- The driveway and other excavation had been started, but is required to renew the permit application as it was determined that the work did not constitute “substantial completion” within 2 years of issuance of the previous special permit.

Ms. Greenbaum asked Building Commissioner Weeks what constituted “substantial completion”, specifically if this would be met by completion of a foundation. Ms. Weeks noted that the Building Inspections Department typically reviews various situations and has found that “substantial completion” is generally constituted by actual construction. Ms. Weeks noted that the site work did not meet the criteria for “substantial completion” and she had recommended the petitioner renew the special permit.

Ms. Ashby inquired whether the conditions of the special permit, such as posting the bond, had been met. The applicant said they had.

The Board was provided with a copy of a letter, dated November 10, 2005 and an email, dated November 14, 2005, from Jason Skeels, Town Engineer, containing items requested to be shown on the final site plan. The Board reviewed the site plan, stamped approved by the Zoning Board of Appeals on November 17, 2005, which contained the Town Engineer's recommendations.

Ms. Greenbaum inquired whether any aspect of the project had been altered, for instance wetland boundaries or otherwise, as there had been significant beaver problems flooding portions of the fields at the last site visit. The applicant identified that no portion of the project had changed.

The Board inquired whether the required amount of fill is the same as originally approved. The applicant responded that the amount of fill is the same and he has followed the previously-approved plan.

Ms. Greenbaum noted that the neighbor had raised concerns related to drainage during the original application; however, no drainage issues were evident at the site, despite the significant amount of recent rain.

Ms. Greenbaum moved to close the hearing. Mr. Beal seconded the motion. The Board voted unanimously to close the hearing.

Public Meeting – Discussion

Ms. Ashby asked the Board if they supported the renewal request and if the same conditions of the original permit would apply. The Board had no objections to renewing the special permit and with the same conditions.

Ms. Greenbaum inquired about the performance bond, Condition #5, of the previous permit.

The Board was advised that the bond had not been received nor had a building permit been issued. The petitioner stated that he would pay the performance bond as soon as needed.

Public Meeting – Findings:

Because no aspect of the permitted activities have changed, the Board determined that the application to renew the Special Permit (ZBA FY2006-00014) should be issued based upon the Specific Findings of the previously issued Special Permit, as follows:

10.38 & 10.381 – The proposal is suitably located in the area since Pomeroy Lane is a residential area with largely single-family homes. The Bylaw does allow for flag lots in a Farmland Conservation District, but on a reduced-size lot, 30,000 square feet, as this proposal provides.

10.382 & 10.384 – The proposal will not constitute a nuisance due to water pollution, flood, dust, etc., because enough safeguards will be placed via the conditions of this Special Permit to control run-off or drainage problems impacting abutters or the adjacent farmland. The proposed culvert at the entrance of the driveway should help protect against flooding along the roadway as well.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, because the driveway will be shared and its design has been supervised by the Town Engineer. In addition, a 50-foot buffer and entrance way for the farmland will be preserved to the east of the frontage lot.

10.385 & 10.390 – The proposal reasonably protects the adjoining premises against detrimental uses, and ensures protection from flood hazards, since the decisions from both the Conservation Commission and the Board of Appeals include conditions pertaining to drainage, elevation of buildings, effect of fill, and the use of hazardous chemicals.

10.386, 10.387 & 10.388 – The proposal ensures that it is in conformance with parking regulations, since the final plans for the house, driveway and parking shall be subject to approval by the Board prior to construction.

10.389 – The proposal includes provisions for town water and sewer. It also provides methods of drainage for surface water.

10.394 & 10.396 – The proposal avoids, to the extent feasible, impact on grade changes, scenic views and wetlands because the conditions of the permit will require proper grading of the areas filled, and will require a performance bond to ensure maximum protection.

10.398 The proposal is in harmony with the general purpose and intent of the Zoning Bylaw because it provides safeguards for potential wetland and drainage problems, thus protecting the safety and general welfare of the inhabitants in the area.

Public Meeting – Zoning Board Decision

Ms. Greenbaum MOVED to approve the renewal of the special permit with the same conditions as identified in the Special Permit (ZBA FY2006-00014). Mr. Beal SECONDED the motion.

For all the reasons stated above, the Board VOTED unanimously to grant the renewal of Special Permit (ZBA FY2006-00014) as applied for by James Rodrigue of Western Development Corp., for a flag lot and filling of land under Sections 6.3 and 5.10 of the Zoning Bylaw on the premises at 68 Pomeroy Lane (Map 20C, Parcel 19, R-N & RLD/FC Zoning District) subject to the same conditions of the previously issued permit.

JANE ASHBY

HILDA GREENBAUM

ERIC BEAL

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.
NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Western Development c/o James Rodrigue for the renewal of the Special Permit ZBA FY2006-00014 for a flag lot and filling of land under Sections 6.3 and 5.10 of the Zoning Bylaw on the property of 68 Pomeroy Lane (Map 20C, Parcel 19, R-N &RLD/FC Zoning District) subject to the same conditions identified in the Special Permit, ZBA FY2006-00014, as follows:

1. Site improvements shall be constructed in accordance with the site plan showing the wetlands, elevations before and after applying fill, the amount of fill needed, water & sewer lines approved by the Board at a public meeting November 17, 2005.
2. The residence shall be limited to single-family.
3. Maintenance and management of the shared driveway shall be as described in the Driveway Agreement approved by the Board on November 17, 2005.
4. All fill shall be applied in accordance with Section 5.10 of the Zoning Bylaw:
 - 5.100 – No slope created by the filling operation shall be finished at a grade in excess of the natural angle of repose of the materials.
 - 5.101 – All filled areas which are not to be built upon within one year shall, upon completion of the operation, be covered with not less than four (4) inches of loam, brought to the finish grade, seeded and mulched in a satisfactory manner
 - 5.102 – The filling of land shall not cause erosion or sedimentation due to improper drainage design or management.
 - 5.103 – Grading, seeding and planting shall be completed in one calendar year. Barriers for control of erosion and drainage shall be in place until the building is complete.
5. Prior to issuance of a building permit, the petitioner shall provide a performance bond of \$10,000.00 payable to the Town of Amherst, to ensure satisfactory compliance with the requirements of Section 5.10 of the Zoning Bylaw and Condition #4 above.
6. Final plans for the location of the house, floor plans, the finished floor elevation of the house, exterior lighting and landscaping shall be submitted to the Board for approval at a public meeting prior of issuance of a building permit.
7. In accordance with Section 7.90 of the Zoning Bylaw, the provisions of Section 7.712 are hereby modified such that the common driveway shall be twelve (12) feet wide, with two-foot shoulders on either side whose subgrade is reinforced to accommodate the weight of emergency vehicles.
8. Use of sodium chloride, pesticides, and other hazardous lawn & garden chemicals is prohibited on the property.
9. This Special Permit is subject to Section 14 of the Zoning Bylaw, Phased Growth. Development authorization which is available as of August, 2008.

JANE ASHBY, Acting Chair
Amherst Zoning Board of Appeals

DATE